

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SALVADOR M. GONZALEZ,
Petitioner,
vs.
S. SHERMAN, et al.,
Respondents.

Civil No. 15-2170 BAS (JMA)

**SUMMARY DISMISSAL OF
SUCCESSIVE PETITION
PURSUANT TO 28 U.S.C.
§ 2244(b)(3)(A) GATEKEEPER
PROVISION**

Petitioner, Salvador M. Gonzalez, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 together with a request to proceed in forma pauperis and a motion to appoint counsel. The Court does not rule on Petitioner's request to proceed in forma pauperis or his motion to appoint counsel because this case is summarily dismissed pursuant to 28 U.S.C. § 2244(b)(3)(A) as indicated below.

PETITION BARRED BY GATEKEEPER PROVISION

The instant Petition is not the first Petition for a Writ of Habeas Corpus Petitioner has submitted to this Court challenging his June 15, 2007 conviction in Imperial County Superior Court case No. JCF18113. On October 28, 2010, Petitioner filed in this Court a Petition for Writ of Habeas Corpus in case No. 10cv2243 JLS (RBB). In that petition, Petitioner challenged his conviction in Imperial County Superior Court case No.

1 JCF18113 as well. On August 26, 2013, this Court denied the petition on the merits.
2 (See Order filed June 26, 2002 in case No. 10cv2243 JLS (RBB) [Doc. No. 31].)
3 Petitioner appealed that determination. On September 12, 2012, the Ninth Circuit Court
4 of Appeals denied Petitioner a certificate of appealability. (See Order in *Gonzalez v.*
5 *Busby, et al.*, No. 13-56594 (9th Cir. Sept. 12, 2014).)

6 Petitioner is now seeking to challenge the same conviction he challenged in his
7 prior federal habeas petition. Unless a petitioner shows he or she has obtained an Order
8 from the appropriate court of appeals authorizing the district court to consider a
9 successive petition, the petition may not be filed in the district court. See 28 U.S.C.
10 § 2244(b)(3)(A). Here, there is no indication the Ninth Circuit Court of Appeals has
11 granted Petitioner leave to file a successive petition.

12 CONCLUSION

13 Because there is no indication Petitioner has obtained permission from the Ninth
14 Circuit Court of Appeals to file a successive petition, this Court cannot consider his
15 Petition. Accordingly, the Court **DISMISSES** this action without prejudice to Petitioner
16 filing a petition in this court if he obtains the necessary order from the Ninth Circuit
17 Court of Appeals. *The Clerk of Court is directed to mail Petitioner a blank Application*
18 *to File a Second or Successive Petition or Motion Under 28 U.S.C. § 2254 or § 2255*
19 *together with a copy of this Order.*

20 **IT IS SO ORDERED.**

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22 **DATED: October 1, 2015**

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24 **Hon. Cynthia Bashant**
25 **United States District Judge**
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